

ORIGINAL



0000124866

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2011 APR 28 P 1:47

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 28 2011

DOCKETED BY

KPS

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE.

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
FINANCING APPLICATION.

DOCKET NO. W-04254A-08-0362

PROCEDURAL ORDER

BY THE COMMISSION:

On October 30, 2009, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock") and authorizing Montezuma Rimrock to incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona ("WIFA") loan in an amount up to \$165,000, for the purpose of completing an arsenic treatment project as described in the Decision. *Inter alia*, Montezuma Rimrock was also ordered to make the following filings with the Commission by the following dates:

Deadline	Compliance Filing
December 31, 2009	Arizona Department of Environmental Quality ("ADEQ") Certificate of Approval of Construction ("AOC") for Well #4
April 30, 2010	ADEQ AOC for arsenic treatment project
May 31, 2012	Rate application using test year ending December 31, 2011
60 days after executing documents finalizing the WIFA Loan	Arsenic remediation surcharge application requesting approval of surcharge to provide funds to meet principal and interest obligations on WIFA loan
60 days after executing documents finalizing the WIFA Loan	Copies of each executed loan document or agreement setting forth the terms of the financing obtained

On November 24, 2009, a copy of an ADEQ Certificate of Approval to Construct ("ATC") was filed for Well #4, on which ADEQ indicated that Well #4's water exceeds the maximum

1 contaminant level ("MCL") for arsenic and that an AOC for the Well will not be issued until
2 acceptable water quality data has been submitted.

3 On December 11, 2009, Montezuma Rimrock filed a letter requesting that the filing deadline
4 for the AOC for the Well be extended to June 30, 2010, because Montezuma Rimrock would not be
5 able to obtain an AOC until after completing installation of the arsenic treatment system.

6 On February 3, 2010, the Commission's Utilities Division ("Staff") filed a Memorandum
7 stating that Staff agreed that Montezuma Rimrock would be unable to obtain an AOC for the Well
8 without an AOC for the arsenic treatment system and, further, that Staff did not object to the
9 requested extension to June 30, 2010, to file the AOC for the Well.

10 On February 11, 2010, a Recommended Order that would have granted the requested
11 extension was issued by the Hearing Division, for consideration at the Open Meeting of March 2 and
12 3, 2010.

13 On February 19, 2010, John E. Dougherty III, of Rimrock, Arizona, filed extensive objections
14 to the Recommended Order.

15 On February 26, 2010, Staff issued a letter to Montezuma Rimrock expressing concern about
16 Montezuma Rimrock's lack of compliance with the MCL for arsenic and requesting that Montezuma
17 Rimrock submit to Staff, within 60 days, a detailed plan addressing and remediating the arsenic issue,
18 explaining why Montezuma Rimrock declined to sign an ADEQ Consent Order related to the arsenic
19 issue, and describing what actions Montezuma Rimrock had taken to date to comply with the Consent
20 Order. The letter stated that if no plan were submitted within 60 days, the issue would be referred to
21 the Commission's Legal Division for possible enforcement action.

22 At the Open Meeting of March 2 and 3, 2010, the Commission allowed public comment
23 regarding the Recommended Order, discussed the Recommended Order, and unanimously voted to
24 disapprove the Recommended Order.

25 On April 5, 2010, Montezuma Rimrock filed a letter in response to Staff's letter, including a
26 description of steps already taken and being taken by Montezuma Rimrock to come into compliance
27 with ADEQ. Montezuma Rimrock included a copy of an ADEQ Compliance Order issued on
28 February 25, 2010, for which Montezuma Rimrock stated it had requested a hearing and an informal

1 settlement conference with ADEQ.

2 On April 13, 2010, a copy of a Yavapai County Superior Court Complaint, filed by Mr.
3 Dougherty and Frederick Shute against the Yavapai County Board of Supervisors ("Board") on April
4 7, 2010, was filed. The Complaint requested reversal of the Board's March 15, 2010, approval of a
5 Use Permit and Screening Variance to allow Montezuma Rimrock to operate Well #4 on residential
6 parcel 405-25-517.

7 On October 1, 2010, a White Paper regarding wells and water use near Montezuma Well
8 National Monument was filed.

9 On October 7, 2010, public comments were filed by a former board member of Montezuma
10 Estates Property Owners Association ("MEPOA"). A petition with the signatures of 102 "property
11 owners and/or residents within Montezuma Estates," expressing support for Montezuma Rimrock,
12 was also filed.

13 On January 24, 2011, Montezuma Rimrock filed a request, pursuant to A.R.S. § 40-252, to
14 have the Commission amend Decision No. 71317 to allow Montezuma Rimrock to seek funding from
15 a private financial institution, with terms and prevailing interest rates of the financial institution.
16 Montezuma Rimrock asserted that such an amendment would allow Montezuma Rimrock to meet an
17 ADEQ Consent Order requirement to have its arsenic treatment facility completed by June 2011.
18 Montezuma Rimrock asserted that the Environmental Impact Statement required by WIFA for its
19 loan would take one to two years to complete with an estimated cost in excess of \$100,000.

20 On February 10, 2011, Staff issued a Status Report on Montezuma Rimrock, providing
21 information regarding Montezuma Rimrock's status with ADEQ and WIFA, stating that Montezuma
22 Rimrock was seriously attempting to fulfill its arsenic treatment mandate to comply with ADEQ and
23 the Commission and that Staff was not recommending any action¹ at that time. Staff noted that
24 Montezuma Rimrock's A.R.S. § 40-252 request was pending possible Commission action.

25 On March 14, 2011, Mr. Dougherty filed extensive comments in opposition to Montezuma
26 Rimrock's A.R.S. § 40-252 request. Mr. Dougherty asserted that the Commission should set an Order
27

28 ¹ Due to the context, this is understood to mean that Staff was not recommending any adverse action at that time.

1 to Show Cause hearing to consider revoking Montezuma Rimrock's Certificate of Convenience and
2 Necessity.

3 On April 7, 2011, Mr. Dougherty filed a letter formally requesting to be included on the
4 service list for "all documents and notifications of hearings or any other proceedings involving the
5 Montezuma Rimrock Water Company." Mr. Dougherty included several attachments to his letter,
6 including documents from the U.S. Environmental Protection Agency ("EPA"); AZTEC Engineering,
7 Arizona LLC; the U.S. Department of the Interior National Park Service; and the Arizona Game and
8 Fish Department.

9 From April 22 through 26, 2011, five comments were filed by Montezuma Rimrock
10 customers expressing support for funding of the arsenic treatment plant.²

11 On April 27, 2011, e-mail correspondence between Mr. Dougherty and Commission
12 personnel were filed. In the e-mails to Commission personnel, Mr. Dougherty asserted that action
13 should be taken against Montezuma Rimrock to stop construction of a pipeline to link Well #4 to the
14 location for the arsenic treatment plant.

15 On April 27, 2011, at the Commission's Staff Open Meeting, the Commission voted to reopen
16 Decision No. 71317 pursuant to A.R.S. § 40-252 to determine whether to modify the decision
17 concerning financing approval and related provisions. The Commission directed the Hearing
18 Division to schedule a procedural conference to discuss the process for the A.R.S. § 40-252
19 proceeding. Montezuma Rimrock attended the Staff Open Meeting via teleconference, and Mr.
20 Dougherty attended in person.

21 It is now necessary and appropriate to schedule a procedural conference to discuss the process
22 and the procedural schedule for the A.R.S. § 40-252 proceeding in this docket.

23 IT IS THEREFORE ORDERED that a **procedural conference** shall be held on **May 16,**
24 **2011, at 9:00 a.m., in Hearing Room # 1** at the Commission's offices at 1200 W. Washington
25 Street, Phoenix, Arizona 85007, for the purpose of discussing the process and procedural schedule for
26 the A.R.S. § 40-252 proceeding in this docket.

27 _____
28 ² The comments appear to have been received by the Commission's Consumer Services Section on April 21 and 22,
2011.

1 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
2 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

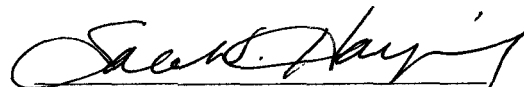
3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
4 Communications) applies to this proceeding and shall remain in effect until the Commission's
5 Decision in this matter is final and non-appealable.

6 IT IS FURTHER ORDERED that any motion filed in this matter that is not ruled upon by the
7 Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

8 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
9 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
10 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
11 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless
12 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
13 Commission.

14 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
15 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
16 hearing.

17 DATED this 28th day of April, 2011.

18
19 

20 SARAH N. HARPRING
21 ADMINISTRATIVE LAW JUDGE
22
23
24
25
26
27
28

1 Copies of the foregoing mailed/delivered
2 this 20th day of April, 2011, to:


3 Patricia D. Olsen, Manager
4 MONTEZUMA RIMROCK WATER COMPANY, LLC
5 P.O. Box 10
6 Rimrock, AZ 86335

7 John Dougherty
8 P.O. Box 644
9 Tempe, AZ 85280

10 Janice Alward, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 Steven M. Olea, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, AZ 85007

20 ARIZONA REPORTING SERVICE, INC.
21 2200 North Central Avenue, Suite 502
22 Phoenix, AZ 85004-1481

23 By: 
24 Debra Broyles
25 Secretary to Sarah N. Harpring
26
27
28